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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re Jonathan A., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. Jonathan A., Defendant and Appellant.	A137898 (Solano County Super. Ct. No. J39788)

This appeal challenges the juvenile court's denial of a motion to suppress evidence under Welfare and Institutions Code section 700.1. Jonathan A. contends that police detained and searched him without a reasonable suspicion he was involved in criminal activity. We agree with the court's determination that the officer had sufficient cause to detain Jonathan, so we affirm.

BACKGROUND

The evidence is from the suppression hearing. At about 1:20 a.m. on July 13, 2012, Hugo Cornejo was awakened at his Linden Avenue home by his barking dog. From his bedroom window he saw two individuals "walking across my house." Shortly afterward he was again awakened by the dog. This time when he looked outside he saw

two men walk into his neighbor's open garage, then walk away toward Evergreen Drive. Cornejo called 911 to report the apparent burglary at 1:37 a.m.

Enrique Henriquez lived nearby. The area is a quiet neighborhood, and foot traffic is unusual at night. Around 1:40 that morning, just a few minutes after Cornejo's 911 call, Henriquez saw Jonathan and another juvenile turn onto Clydesdale Way from Suffolk Way and walk north. The two were talking, but they stopped when they saw Henriquez. Henriquez was suspicious because of the late hour. He greeted the two and asked where they were going. Jonathan's companion said they were on their way home to "Ullep" Street. Henriquez said there was no street by that name in the area, and that "[y]ou guys don't belong here." Jonathan's companion said they were trying to take some alcohol home and asked Henriquez for directions to Ullep.

Henriquez reached for his phone. The two youths pleaded with him not to call the police. As Henriquez started dialing, they fled back around the corner onto Suffolk. The whole exchange lasted one-and-a-half or two minutes. Henriquez called 911 at 1:44 a.m. He was talking to the police dispatcher when he saw a police car approaching on Evergreen and flagged it down. Henriquez told the officer about the two young men and pointed out the direction in which they had fled.

Fairfield Police Officer Keith Pulsipher responded to Mr. Cornejo's 911 call. The dispatcher told Officer Pulsipher there were two suspects, but provided no information about their race, height, weight, or other identifying characteristics. Mr. Henriquez flagged Pulsipher down on Evergreen, told him about his encounter with the two juveniles, and said they had fled east on Suffolk. Officer Pulsipher followed Henriquez's direction and spotted a juvenile on the corner of Clydesdale and Suffolk, two blocks from the reported burglary. He stopped his patrol car and told the youth to have a seat on the curb. As he was speaking to the suspect, Pulsipher saw Jonathan about 15 yards away and instructed him to join his companion on the curb. The officer saw no one else in the area.

Pulsipher spoke briefly with the two suspects as he waited for additional officers to arrive. He was aware that Fairfield has a curfew that requires all minors to be indoors by 11:00 p.m. When backup arrived, Officer Pulsipher pat searched both youths for weapons "for my safety and the safety of my fellow officers." He was concerned about safety because of "the time of day, the lighting conditions, the number of individuals that were there," and because they were wearing baggy clothing that could conceal a weapon. The officer frisked Jonathan and found a video game controller in his pocket, which Pulsipher was able to identify by feel. He saw that the device was blue, but at the preliminary hearing he did not recall whether he had removed it or simply glanced into Jonathan's pocket. The boys were compliant and unarmed, so Pulsipher concluded they were not involved in the burglary and let them go.

Officer Pulsipher then responded to a dispatch that officers were needed near the site of the burglary. When he arrived there, he was told that the two suspects were wearing light- and dark-colored tops, respectively, and that an officer had seen two individuals running from the area. With that additional information, Officer Pulsipher returned to searching the neighborhood and once again came across Jonathan and his companion. He detained them for a second time because "nobody else had been seen in the area, they were the only two individuals that were there. After speaking with some other officers, I had a better description of the clothing that the two individuals were wearing. I just thought it was strange and more than a coincidence that they happened to be in the area [where] this had occurred."

During this second detention, Officer Pulsipher learned from dispatch that a video game console and controller had been taken in the burglary. He handcuffed Jonathan and asked him what he had done with the game controller. Jonathan said he had thrown it in some bushes.

The district attorney filed a juvenile wardship petition alleging that Jonathan had committed burglary. Jonathan moved to suppress the evidence against him as the product

of an unlawful detention. The juvenile court denied the motion. It explained: "it's important to remember the setting that we're talking about as in terms of time and place. The time is very—in the middle of the night. The place is an area where the crime has been observed, or indications of a crime, and notification to the dispatcher of this unusual conduct. Stops them near the place. [Officer Pulsipher] does have the right to stop on curfew. I think he certainly, to do a good job, he had to talk to these people he finds in the very area where the problem has been noticed. [¶] This time of night in this kind of situation, a pat search is reasonable. I think it's important to note that when he finished the pat search, he let them go, and then he did find out—or he was able to determine one thing he found. [¶] Now, he gets a little more information. He's not quite as pressed for time because he's not going off to another offense, and he sees them again in this area, and I think he – and again, given all the circumstances, he had the right to stop. He did not arrest until he found out what had been taken from the scene of the burglary. [¶] I think when you put all of these things together in order, the officer's conduct was reasonable."

Jonathan admitted the allegation. He was granted deferred entry of judgment and placed on probation in his parents' custody subject to various terms and conditions.

This appeal timely followed.

DISCUSSION

Jonathan argues that both detentions were illegal because Officer Pulsipher lacked an objective basis or particularized reason to suspect him of criminal activity. Alternatively, he contends the *Terry*[1] search conducted during the initial detention was unjustified by the circumstances and unreasonably intrusive. We disagree. Officer Pulsipher's testimony established that he had constitutionally adequate grounds to detain Jonathan and conduct the brief pat search when he first encountered him.

[1] Terry *v.* Ohio (1968) 392 U.S. 1, 21.

A. Legal Principles

"A detention is constitutionally reasonable if the circumstances known or apparent to the detaining officer include 'specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity. Not only must he subjectively entertain such a suspicion, but it must be objectively reasonable for him to do so: the facts must be such as would cause any reasonable police officer in a like position, drawing when appropriate on his training and experience [citation], to suspect the same criminal activity and same involvement by the person in question.' " (*People v. Daugherty* (1996) 50 Cal.App.4th 275, 285.) " 'Courts have used a variety of terms to capture the elusive concept of what cause is sufficient to authorize police to stop a person. Terms like "articulable reasons" and "founded suspicion" are not self-defining; they fall short of providing clear guidance dispositive of the myriad factual situations that arise. But the essence of all that has been written is that the totality of the circumstances—the whole picture—must be taken into account. Based upon that whole picture the detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity.' " (*People v. Souza* (1994) 9 Cal.4th 224, 230, quoting *United States v. Cortez* (1981) 449 U.S. 411, 417-418.)

When the denial of a motion to suppress evidence is challenged on appeal, we review the record in the light most favorable to the ruling, uphold the trial court's express and implied factual findings if supported by substantial evidence, and independently apply the appropriate federal constitutional standards to those facts. (*People v. Valenzuela* (1999) 74 Cal.App.4th 1202, 1206-1207; *In re Arturo D.* (2002) 27 Cal.4th 60, 77.) The power to judge credibility, weigh evidence, and draw factual inferences is vested in the trial court and all presumptions favor its findings. (*People v. Leyba* (1981) 29 Cal.3d 591, 597; *People v. James* (1977) 19 Cal.3d 99, 107.)

B. Analysis

We agree with the trial court that the totality of the circumstances— "the whole picture" —provided adequate cause for the brief investigative stop that occurred when Officer Pulsipher initially detained Jonathan and his companion. Officer Pulsipher was responding to a report that two suspects had committed a burglary in the vicinity about seven minutes earlier. It was shortly before 2:00 a.m. in a quiet neighborhood where late-night foot traffic is unusual. The officer was within two or three blocks of the reported burglary when Henriquez flagged him down, reported his encounter with the two youths, and pointed out the direction they had fled. Proceeding in that direction, Officer Pulsipher located a solitary juvenile on the corner of Suffolk and Clydesdale. Very shortly after that he spotted Jonathan some 15 yards away.[2] There were no other people around. In light of the oddity of pedestrians being in the area at that late hour, the proximity (both geographically and in time) to the burglary, and the dispatcher's report of two perpetrators, Pulsipher had a reasonable basis to suspect Jonathan was involved in criminal activity.

It is true that Jonathan might have had a perfectly innocent reason for being out in that location at that hour. But that does not mean the officer's decision to detain him was unconstitutional. " '[T]he possibility that the circumstances are consistent with lawful activity does not render a detention invalid, where the circumstances also raise a reasonable suspicion of criminal activity. The public rightfully expects a police officer to inquire into such circumstances; indeed the principal function of the investigative stop is to resolve that ambiguity.' " (*People v. Conway (1994*) 25 Cal.App.4th 385, 390 [officer detained individual seen leaving the area within minutes of receiving a report of a burglary in progress at 3 a.m.]; see also *People v. Lloyd* (1992) 4 Cal.App.4th 724, 733-

[2] The record is unclear as to the precise amount of time that elapsed between when Officer Pulsipher told Jonathan's companion to sit on the curb and Jonathan's appearance. But from the officer's testimony it seems that very little time had elapsed.

734 [suspect seen at 4 a.m. next to business where silent alarm went off walked away when officers approached].)

The juvenile court also found the officer had the right to detain Jonathan and his companion for violating Fairfield's curfew ordinance. Jonathan argues this was not a valid basis for the stop because Officer Pulsipher did not testify that the curfew factored into his decision to detain the youths. We disagree. Although the record could be clearer, Officer Pulsipher testified that he was aware of the curfew ordinance and described the suspects as juveniles. Reviewing the record in the light most favorable to the ruling, the circumstances thus supported an objectively reasonable suspicion that Jonathan had violated the curfew law. (See *In re Francis W.* (1974) 42 Cal.App.3d 892, 900-901.) That Officer Pulsipher did not explicitly identify this as a reason for the stop at the preliminary hearing is not dispositive. " 'Whether a Fourth Amendment violation has occurred "turns on an objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time," . . . and not on the officer's actual state of mind at the time the challenged action was taken.' " (*People v. Lloyd, supra,* 4 Cal.App.4th 724, 733.)

Jonathan relies on *Knowles v. Iowa* (1998) 525 U.S. 113 (*Knowles*) to argue his detention was invalid, but it does not support his position. *Knowles* holds that an officer who stops and cites a motorist for speeding, but does not arrest him, cannot constitutionally conduct a full field-type search under the bright-line "search incident to arrest" exception to the Fourth Amendment's warrant requirement. (*Id.* at pp. 116-119.) No such search was conducted here, and *Knowles* has no bearing on the validity of the brief investigative detention at issue here.

The circumstances justified the brief pat search that revealed the game controller in Jonathan's pocket. Officer Pulsipher suspected that Jonathan and his companion might have just committed a burglary. It was late at night, no other people were in the area, and the juveniles were wearing baggy clothes that could have concealed a weapon. Under

these circumstances, he acted reasonably and properly in conducting a protective pat down search. (*People v. Castaneda* (1995) 35 Cal.App.4th 1222, 1230; *People v. Myles* (1975) 50 Cal.App.3d 423, 430; see also *Scott v. United States* (1978) 436 U.S. 128, 138.) "It is reasonable for an officer to believe that a burglar may be armed with weapons, or tools such as knives and screwdrivers which could be used as weapons, and that a pat-down search is necessary for the officer's safety." (*People v. Myles, supra,* 50 Cal.App.3d at p. 430.)

Jonathan contends the pat search was unduly invasive because Officer Pulsipher "knew, the moment he felt it, that the item in appellant's pocket was a gaming device and not a weapon" but nonetheless "removed it, or at least took the opportunity to view it, and thereby discovered its exact nature and blue markings, which he then used to justify and effectuate a second detention, arrest and seizure" in violation of the Fourth Amendment. The contention is meritless. The testimony, properly viewed, supports the conclusion that the officer glimpsed the device inside or extending from Jonathan's pocket in the process of, and incident to, a valid *Terry* search. In any event, while Jonathan's possession of the game controller ultimately tied him to the burglary, the controller's color or markings were irrelevant to his detention and arrest.

The second detention also passes constitutional muster. At that point Officer Pulsipher was not only aware of the circumstances that justified the initial *Terry* stop, but had also obtained a description of the suspects' clothing from other officers. Jonathan argues this information was irrelevant because the record does not show that his and his companion's clothing matched that description. But, the court could reasonably infer from Officer Pulsipher's testimony that he effected the second detention in part to ascertain whether the suspects were dressed as described. In sum, the officer possessed reasonable cause for both detentions and conducted a lawful protective search.

DISPOSITION

The judgment is affirmed.

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Siggins, J.

We concur:

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McGuiness, P.J.

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Pollak, J.